In the

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1077

Valley International Properties, Inc.,
Appellant,

vs.

Los Campeones, Inc.,
Appellee.

On appeal from the Supreme Court of Texas

JURISDICTIONAL STATEMENT

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January 22, 1979

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568 S.W. 2d 680
(Tex. Civ. App. -- Corpus Christi, 1978, writ ref., n.r.e.)

(b)

Jurisdiction

(i) Nature of the Proceeding.

Valley International Properties, Inc. ("VIP"), Appellant, is a Texas corporation that was in the process of completing a Chapter XI Arrangement at the time Appellee obtained an order compelling VIP to hold an annual shareholders' meeting. Los Campeones, Inc. (hereinafter "Appellee") is a Texas corporation that was attempting to take over control of Appellant during the Bankruptcy proceedings.

Pursuant to Article 2.24B of the Texas Business Corporation Act, Appellee filed suit against

Appellant on July 25, 1977 in the 197th Judicial District Court of Cameron County, Texas. (Tr. 2) Although an ex parte Order was entered on July 25, 1977, it was set aside and a hearing was held from August 19, 1977 to August 31, 1977, at which time the trial court entered the Order from which Appellant has appealed.

(ii) Judgment sought to be reviewed.

The Thirteenth Supreme Judicial District Court of Civil Appeals at Corpus Christi, Texas sustained the trial court's Order by Judgment rendered June 15, 1978. Appellant filed its Motion for Rehearing which was denied on June 18, 1978.

Appellant filed its Application for Writ of Error to the Supreme Court of Texas on July 25, 1978. Said Application was refused on October 25, 1978.

Appellant then filed its Notice of Appeal to the United States Supreme Court on October 30, 1978 in both the Supreme Court of Texas and the Thirteenth

Supreme Judicial District Court of Civil Appeals in Corpus Christi, Texas.

(iii) Jurisdiction.

The Supreme Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1257(2).

(iv) Cases sustaining jurisdiction.

International Shoe Co. v. Pinkus, 278 U.S. 261, 73 L.Ed. 318 (1929)

Boese v. King, 108 U.S. 379, 27 L.Ed. 760 (1883)

Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 17 L.Ed. 531 (1864)

In re Plankinton Building Co., 138 F.2d 221, 222 (7th Cir. 1943)

Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, 66 L.Ed 239 (1921)

Nashville, C. & St. L. Ry. v. Walters, 294 U.S. 405, 415 (1935)

(v) Statutes and Rules.

Section 311 of the United States Bankruptcy Laws provides:

> Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located.

11 U.S.C. § 311.

Rule 11-44 of the Rules of Bankruptcy Procedure provides that:

> A petition filed under Rule 11-6 or 11-7 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, . . .

Id., (hereinafter "Rule 11-44").

Article 2.24B of the Texas Business Corporation Act provides in pertinent part:

> B. An annual meeting of shareholders shall be held at such time as may be stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any 13-month period, any court of competent jurisdiction in the County in which the principal office of the corporation is located may, on the application of any shareholder, summarily order a meeting to be held.

TEX. BUS. CORP. ACT ANN. Art. 2.24B (1973) (hereinafter "TBCA"), Vol. 3A V.A.T.S. Supp. 1978 at 78.

Verbatim copies of the pertinent portions of the trial court order, the Judgment of the Thirteenth Court of Civil Appeals, and the refusal of Application for Writ of Error by the Supreme Court of Texas are appended as provided by Rule 15(i) and (j) of the Rules of the Supreme Court of the United States.

(c)

Questions Presented by Appeal

Appellant urges that the trial court had no jurisdiction to entertain a suit against a debtor corporation engaged in a Chapter XI Arrangement. The statutory basis of Appellee's suit, Art. 2.24B, TBCA, is unconstitutional and the order compelling Appellant to hold an annual shareholders meeting is therefore void.

This appeal raises several distinct questions:

(1) WHETHER ARTICLE 2.24B OF THE TEXAS BUSINESS CORPORATION ACT IS INVALID AND UNCONSTITUTIONAL

AS APPLIED TO APPELLANT IN THAT IT CONFLICTS WITH ARTICLE I, § 8(4) AND ARTICLE VI, § 2, OF THE UNITED STATES CONSTITUTION, AND 11 U.S.C. § 711?

(2) WHETHER ARTICLE 2.24B OF THE TEXAS BUSINESS CORPORATION ACT IS INVALID AND UNCONSTITUTIONAL AS APPLIED TO APPELLANT BECAUSE RULE 11-44 OF THE UNITED STATES BANKRUPTCY RULES STAYED ANY COURT PROCEEDING AGAINST APPELLANT?

(3) WHETHER THE "AUTOMATIC STAY" OF RULE 11-44 DIVESTED THE STATE COURT OF JURISDICTION, OR WHETHER THE STATE COURT HAD THE POWER TO HEAR THE CASE, LIMITED ONLY BY THE SOUND EXERCISE OF DISCRETION?

(4) WHETHER THE STATE COURT ABUSED ITS DISCRETION IN ENTERTAINING A SUIT AGAINST A CHAPTER XI DEBTOR AFTER HAVING BEEN INFORMED OF THE PENDING ARRANGEMENT AND THE APPLICABLE RULE 11-44 STAY ORDER?

(d)

Statement of the Case

On December 6, 1976, Appellant filed an application under the Federal Bankruptcy Act for an

arrangement pursuant to Chapter XI of the Act. Since that time, up to the dismissal of the Chapter XI on November 30, 1977, the corporate affairs of VIP were controlled exclusively by the provisions of 11 U.S.C. §§ 701 et seq. and the United States Bankruptcy Court for the Southern District of Texas. 11 U.S.C. § 711.

Appellee, however, filed its PETITION FOR ANNUAL SHAREHOLDERS' MEETING against VIP in state court on July 25, 1977, pursuant to Article 2.24B of the Texas Business Corporation Act. That Act provides in pertinent part:

> B. An annual meeting of shareholders shall be held at such time as may be stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any 13-month period, any court of competent jurisdiction in the County in which the principal office of the corporation is located may, on the application of any shareholder, summarily order a meeting to be held.

TEX. BUS. CORP. ACT ANN. Art. 2.24B (1973) (hereinafter "TBCA").

Such a requirement, however, cannot be constitutionally valid if it confers jurisdiction upon a

state court in such a way that, when applied to Appellant, it conflicts with the exclusive jurisdiction of the United States Bankruptcy Court.

Appellant timely objected to the trial Court's jurisdiction and has properly preserved said objection for appeal at all levels. See Verbatim quotes in Appendix from Defendant's ANSWER, Tr. 5; MEMORANDUM IN SUPPORT OF DEFENDANT'S REQUEST THAT THE COURT WITHDRAW ITS ORDER COMPELLING AN ANNUAL MEETING OF SHAREHOLDERS OF VALLEY INTERNATIONAL PROPERTIES, INC., Supp. Tr. 8; Counsel's Objection to Jurisdiction; Brief for Appellant in Court of Civil Appeals; Appellant's Motion for Rehearing; Application for Writ of Error to the Supreme Court of Texas; and Appellant's Notice of Appeal.

It is axiomatic that a debtor corporation which is under the jurisdiction of a federal court pursuant to the bankruptcy laws of the United States

may not be the subject of related litigation in state court.

> The jurisdiction of the bankruptcy court over the corporate debtor and its affairs, exclusive and paramount, attaches upon institution of the proceeding.

In re Plankinton Building Co., 138 F.2d 221, 222 (7th Cir. 1943). See also International Shoe Co. v. Pinkus, 278 U.S. 261, 73 L.Ed. 318 (1929); Boese v. King, 108 U.S. 379, 27 L.Ed. 760 (1883); and Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 17 L.Ed. 531 (1864).

Appellee's intention, as demonstrated by its pleadings, is to elect its own board of directors, officers, and oust the present management from control of the debtor. Such action would clearly be an infringement upon the exclusive province of the Bankruptcy Court. Appellant's primary complaint is that Appellee attempted this without the prior consent or knowledge of the Bankruptcy Court.

The Seventh Circuit in In re Plankinton Building Co., 138 F.2d 221 (7th Cir. 1943) recognized the difficulty of protecting the court's exclusive jurisdiction over the debtor's affairs while still

recognizing the shareholders' continuing rights under state law.

The Court first noted that the bankruptcy court had exclusive and paramount jurisdiction over both the corporation and its affairs. It is significant to note that the shareholders' fight for control in Plankinton was fought in the bankruptcy court. No other forum was ever involved.

The Court went on to explain that it could exercise jurisdiction over all aspects of the debtor's affairs, including shareholders' meetings, if it were necessary to do so.

> The jurisdiction of the bankruptcy court over a corporate debtor and its affairs, exclusive and paramount, attaches upon institution of the proceeding. Thereafter the court is vested with power to do everything proper and necessary to administer the estate in an unhampered manner in accord with the purposes and provisions of the bankruptcy act. However, the court has no jurisdiction over the meetings of stockholders of a debtor in reorganization, unless the exercise of such corporate statutory functions interferes with the administration of the estate by the

> bankruptcy court. If, in the utilization of such functions or in the manner of their exercise, anything is done or is reasonably likely to be done which impedes, interferes with, or prejudices the bankruptcy jurisdiction, then the court may so limit the application of the functions as effectually to safe-guard its administration. It may impose such conditions and limitations upon the employment of corporate power as will prevent the corporation and its officers and stockholders from doing anything reasonably tending to embarrass or handicap the administration. Thus, it may enjoin improper solicitations for proxies, if they tend to prejudice the court's unhampered control. But only to assure protection of its jurisdiction should it exert its restraining power. In other words, the court must permit the debtor's enjoyment of statutory rights under such supervision as will guarantee that its control and administration of the assets under the bankruptcy act will not be impeded, embarrassed or prejudiced.

In re Plankinton, 138 F.2d 221, 222 (7th Cir. 1943).

In 1943, a bankruptcy proceeding did not enjoin other actions or proceedings except upon application of a party. As of July 1, 1976, Rule 11-44 made the Stay Order automatic.

To the extent that Plankinton acknowledged the court's power to enjoin proxy

solicitations and other shareholder and officer actions, that power is now automatically exercised by Rule 11-44 to the extent that the debtor may not be sued in another forum without the prior consent of the bankruptcy court.

It may be, as suggested in Plankinton, that the bankruptcy court should normally permit a shareholders' meeting, unless it is necessary to "limit the . . . functions as effectually to safe-guard its administration." Such a limitation on the bankruptcy court is not jurisdictional, however, and only requires the exercise of sound discretion.

Since the Chapter XI Court does have jurisdiction over shareholder actions, that jurisdiction must be exclusive, 11 U.S.C. § 711, even if it is sparingly used. Likewise, the change in Rule 11-44 in 1976 altered whatever ambiguity remained in the pre-Rule 11-44 decisions.

Even so, virtually all bankruptcy cases dealing with shareholders' meetings have recognized that the bankruptcy court itself is the proper forum to determine whether such a meeting should be held.

Exhaustive research by Appellant has revealed only one case where shareholders have attempted to control the affairs of a debtor in bankruptcy for the purpose of removing corporate officers through a forum other than the bankruptcy court. This single attempt failed for lack of jurisdiction. As the Court there noted:

> . . . it is apparent that plaintiff has attempted to assert . . . (7) an action to remove the officers of the corporate company now in bankruptcy—clearly an action to control corporate affairs, lodged solely with the bankruptcy court; (8) an action in equity to recover the stock of the corporation—a cause of action which, if existing, is likewise lodged solely in the trustee in bankruptcy.

Gruenwald v. Moir Hotel Co., 96 F.2d 932, 935 (7th Cir.), cert. denied, 305 U.S. 615 (1938).

Rule 11-44 of the Rules of Bankruptcy Procedure provides that:

> A petition filed under Rule 11-6 or 11-7 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, . . .

This Rule 11-44 "stay" was automatic as of December 6, 1976 and remained in force during the pendency of the Chapter XI proceeding.

> Rules promulgated pursuant to 28 U.S.C. §2705 supersede laws, including provisions of the Bankruptcy Act, in conflict with such rules after they take effect.

ADVISORY COMMITTEE'S INTRODUCTORY NOTE TO THE PRELIMINARY DRAFT, BANKRUPTCY RULES Vol. 2 (1976 Collier ed.) 757.

On May 10, 1977, the Honorable John R. Blinn, United States Bankruptcy Judge for the Southern District of Texas, entered an order confirming the plan of arrangement proposed by the Appellant. Article XIII of that plan specifically provided in pertinent part:

> Any order staying litigation and foreclosure of liens ordered by the Court or imposed by operation of law shall remain in full force and effect until the entry of a final order terminating the captioned cases.

(Def. Exh. 2, R. Vol. I, 60-61)

Thus, the Bankruptcy Court had retained jurisdiction over the debtor, VIP, and the Rule 11-44 Stay Order was in full force and effect when Appellee filed its PETITION FOR ANNUAL SHAREHOLDERS' MEETING in state court on July 25, 1977.

Upon proper notice of the existence of the Rule 11-44 Stay Order, the state trial court should have abated the proceeding because it had no jurisdiction to continue.

> It is difficult to conceive of a rule with a more apparent and certain meaning: after the Chapter XI petition has been filed, a debtor cannot be sued.

Fidelity Mortgage Investors v. Camelia Builders, Inc., 550 F.2d 47, 51 (2d Cir. 1976), cert. denied, 430 U.S. 976 (1977); see also Power-Pak Products, Inc. v. Royal Globe Insurance Co., 433 F.Supp. 684, 685 (W.D.N.Y. 1977) ("On July 30th Lite-A-Loy . . . filed their Chapter XI bankruptcy petitions. Thereupon, the

South Carolina actions against them were automatically stayed pursuant to Bankruptcy Rule 11-44.")

The only possible exemption from the Stay Order that could conceivably have permitted Appellee's PETITION during the period July 25, 1977 through September 7, 1977 would have been the partial lifting of the Stay for purpose of foreclosure. (Pl. Exh. 4, R. Vol. I, 200). This resulted from Brownsville Savings and Loan Association's (hereinafter "Brownsville") application for foreclosure as to certain collateral, including the shares of VIP stock that are the subject of this Appeal. Pursuant to that request, on May 18, 1977, the Bankruptcy Court entered an ORDER TERMINATING STAY AND AUTHORIZING FORECLOSURE BY SECURED CREDITORS, (Pl. Exh. 4) in which it lifted the Rule 11-44 stay as to Brownsville for foreclosure against the shares of Appellant that were the subject of a security agreement. The stay was lifted for the sole purpose of foreclosure and only as to Brownsville. It did not lift

the stay as to Los Campeones, Inc. or other actions affecting the Debtor.

The Petition filed by Appellee on July 25, 1977 was a "proceeding against the debtor" which had been prohibited or preempted by the Rule 11-44 Stay Order. The state court had no jurisdiction to entertain a suit against VIP brought by Appellee during the pendency of the Stay Order.

The Opinion of the Court of Civil Appeals advances the proposition that the pendency of a Chapter XI proceeding does not divest a state court of jurisdiction of a shareholders suit unless there is an interference with the jurisdiction of the bankruptcy court. App. Op. at 6-7.

With this general statement, Appellant agrees. But any state suit to oust current management (who is debtor-in-possession under 11 U.S.C. § 741, and whose duty is to propose a plan of re-arrangement

under 11 U.S.C. § 723) must necessarily interfere with the affairs and hence the jurisdiction of the bankruptcy court.

> The stay insures that the debtor's affairs will be centralized, initially, in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all of the creditors' interests with one another.

Fidelity Mortgage Investors v. Camelia Builders, Inc., 550 F.2d 47, 55 (2d Cir. 1976), cert. denied, 430 U.S. 976 (1977).

Note, also, that the bankruptcy court was never given an opportunity to determine whether or not a shareholders' meeting, under the circumstances then existing, would have interfered with the arrangement.

The entire purpose of the bankruptcy laws would be thwarted if Appellee were permitted to proceed. The Rule 11-44 stay is meant to protect the Debtor (Appellant herein) from having to exhaust its resources in defense of multiplicitous lawsuits. For

that reason, jurisdiction vests exclusively in the Bankruptcy Court and all other actions are stayed. The fact that Appellant had to appear, defend and appeal this suit is illustrative of the type of interference with an ongoing plan of arrangement which the law prohibits.

It is not sufficient to say that Appellant could have sought contempt proceedings against Appellee in the Bankruptcy Court. It is not enough to say that Appellee may have been entitled to the requested relief under state law. Jurisdiction may not be acquired by reference to these extraneous facts. Both arguments were advanced and rejected in the Fidelity Mortgage Investors decision:

> It may be true, as Camelia and Farnale assert, that, by virtue of their allegedly superior claim under Mississippi law, they are entitled to protection against the consequences of FMI's attempted foreclosure on the condominium project. That, however, is not the issue in this case, as it presently stands before us. The issue here is whether, at the time Camelia and Farnale filed their federal action, the Mississipi district court

was the proper forum for them to advance these arguments.

We conclude that it was not.

* * *

The issue here is a procedural one: whether Camelia and Farnale should have secured permission from the New York bankruptcy court before proceeding with their action in Mississippi.

Rule 11-44 required Camelia and Farnale to secure such prior permission. That Camelia and Farnale may have a valid substantive position under Mississippi law does not mitigate, excuse or justify their willful procedural violation of the federal bankruptcy rules.

Fidelity Mortgage Investors v. Camelia Builders, Inc., 550 F.2d 47, 57 (2d Cir. 1976), cert. denied, 430 U.S. 976 (1977).

In light of the existence of the Rule 11-44 Stay Order at the time of the filing of this action and entry of the Order appealed from, it is manifestly apparent that Article 2.24B of the TBCA is unconstitutional as applied to VIP.

(e)

Substantial Federal Question

The Constitutional questions presented by this appeal are of public importance for many reasons.

(1) They deal with the rights of pledgees of stock during a Chapter XI arrangement. Pledges of 51% or more of the stock of a closely held corporation are a common security device. Foreclosure of the control shares in the event of insolvency is normal and usual. Recurring serious questions are presented by this appeal as to the propriety of the purchaser of such shares (at the foreclosure) ousting management then engaged in a Chapter XI arrangement, in a forum other than the bankruptcy court.

(2) The need for exclusive jurisdiction of the debtor's affairs as well as its property is always compelling. 11 U.S.C. § 711. Such jurisdiction is essential to exclude any interference by the acts of

others or by proceedings in other courts.

(3) Certain lower court decisions on related points have been erroneously interpreted as holding that the pendency of a bankruptcy proceeding does not oust a state court of jurisdiction over a suit against a debtor, Fitch v. Jones, 441 S.W.2d 187 (Tex. 1969), as well as that a Chapter XI court does not have jurisdiction over shareholders of a debtor corporation. In re Texas Consumer Finance Corporation, 480 F.2d 1261 (5th Cir. 1973). Both those cases, although correct on their facts, were erroneously cited by the Court of Civil Appeals to the effect that the trial court had jurisdiction, and the bankruptcy court had none, as to shareholders' meetings during an Arrangement. Such cases will remain confusing and unclear unless this Court permits plenary consideration of this Appeal.

Indeed, such cases are already at odds with the holding in Fidelity Mortgage Investors v. Camelia Builders, Inc., 550 F.2d 47, 51 (2d Cir. 1976), cert.

denied, 430 U.S. 976 (1977), to wit:

> Rule 11-44 bars "the commencement or the continuation of any court or other proceeding against the debtor" after the debtor has filed a Chapter XI petition. It is difficult to conceive of a rule with a more apparent and certain meaning: after the Chapter XI petition has been filed, a debtor cannot be sued.

Id., see also Baum v. Anderson, 541 F.2d 1166, 1170 (5th Cir. 1976).

Plenary consideration is therefore proper.

(4) The automatic stay provisions of Rule 11-44 became effective on July 1, 1976. The case law is unclear as to whether the automatic stay actually divests a state court of jurisdiction to proceed with any suit against a debtor, or whether the debtor may obtain protection only by seeking contempt proceedings against those who violate the stay order. This is a serious and recurring procedural question of paramount importance to debtors in a Chapter XI arrangement.

Although the state court certainly has jurisdiction to determine whether or not it has jurisdiction, there are serious questions as to how much farther it may go in hearing a case in defiance of a Rule 11-44 Stay Order.

If the Rule 11-44 Stay does not divest the state court of the power to proceed, then exercising jurisdiction would oftentimes be at least an abuse of discretion. Appellant submits that certain abuses of discretion are jurisdictional in nature. For an analogous situation in federal court, see Barber v. Barber, 21 How. 582 (U.S. 1859) (federal courts disclaim any jurisdiction in matters of divorce), and Sutton v. English, 246 U.S. 199 (1918) (holding that federal courts have no powers of probate, and extremely narrow powers in matters ancillary to probate).

The far reaching ramifications of the jurisdictional questions raised in this appeal justify plenary consideration by the Court.

(5) Oral argument and briefs on the merits should be permitted on the issue of this Court's jurisdiction. The substantial nature of the federal jurisdictional questions raised by Appellant (in this Appeal) depend upon whether the trial court and Court of Civil Appeals correctly ignored the Rule 11-44 Stay Order. Thus the heart of the question raised is that of jurisdiction itself. This fact alone, Appellant submits, justifies plenary consideration.

PRAYER

Wherefore premises considered, Appellant respectfully prays that this Court will exercise its Appellate jurisdiction and permit plenary consideration of this Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing JURISDICTIONAL STATEMENT have been served upon all necessary parties or their attorneys of record by placing same in the United States mail, postage prepaid, this 24 day of Jan, 1979.

Rhett G. Campbell

January 22, 1979

APPENDIX

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APPENDIX A

No. 77-1563-C

Los Campeones, Inc., Plaintiff	X	In the District Court
v.	X	of Cameron County, Texas
Valley International Properties, Inc., Defendant.	X	197th Judicial District

DEFENDANT'S ANSWER AND REQUEST THAT THE COURT CANCEL ITS ORDER FOR AN ANNUAL SHAREHOLDERS' MEETING HERETOFORE ISSUED ON JULY 25, 1977 BECAUSE OF FRAUDULENT AND UNTRUE REPRESENTATIONS MADE BY LOS CAMPEONES, INC. TO THE COURT TO INDUCE THE COURT TO ISSUE SAID ORDER

* * * *

Defendant would further show this Court that the entire Petition filed by LOS CAMPEONES, INC., over the signature of Barry Brown, its attorney, was done willfully and intentionally with the full knowledge that there was in full force and effect under Rule 11-44 of the Federal Rules of Bankruptcy a prohibition against the filing of said Petition, or any other cause of action against VALLEY INTERNATIONAL PROPERTIES, INC. while the Chapter XI Bankruptcy Proceeding is

still in effect and while VALLEY INTERNATIONAL PROPERTIES, INC., and all of its assets are under the jurisdiction of Judge John Blinn, the Bankruptcy Judge.

APPENDIX B

STATEMENT OF FACTS:

THE COURT: I don't know why this wasn't presented to Judge Blinn for his approval.

MR. ELLIS:

* * * *

All of the assets of this corporation, whatever they amount to, $20,000,000.00 or so, when it started are in the hands of Judge Blinn. And that is one of the purposes of Rule 11-44, is to stay all court proceedings so that the debtor is not harried and runs around defending lawsuits, and that's the reason that they had to get a lift of the special stay order in order to allow them to foreclose, and we say that is the proper forum and we say that that order is in effect here and that that is the reason that this Court does not have the jurisdiction to grant relief which Judge Scanlan did ex parte, without any notice or without any hearing whatsoever.

APPENDIX C

NO. 77-1563-C

Los Campeones, Inc., Plaintiff,	X	In the District Court
v.	X	of Cameron County, Texas
Valley International Properties, Inc., Defendant.	X	197th Judicial District

MEMORANDUM IN SUPPORT OF DEFENDANT'S REQUEST THAT THE COURT WITHDRAW ITS ORDER COMPELLING AN ANNUAL MEETING OF SHAREHOLDERS OF VALLEY INTERNATIONAL PROPERTIES, INC.

I. LACK OF JURISDICTION.

Valley International Properties, Inc. (hereinafter "Defendant") urges that the PETITION FOR ANNUAL SHAREHOLDERS' MEETING (hereinafter "Petition") filed by Los Campeones, Inc. (hereinafter "Plaintiff") should not have been granted by this Honorable Court for want of jurisdiction.

A. EXCLUSIVE JURISDICTION OVER DEFENDANT LIES IN THE FEDERAL BANKRUPTCY COURT.

On December 6, 1976, Defendant filed an application under the Federal Bankruptcy Act for an arrangement pursuant to Chapter XI of that Act. Since that time, up to and including the present date, the corporate affairs of Defendant have been controlled exclusively by the provisions of 11 U.S.C. §1 et seq. and the United States Bankruptcy Court for the Southern District of Texas.

Rule 11-44 of the Rules of Bankruptcy Procedure provides that:

> A petition filed under Rule 11-6 or 11-7 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, . . .

This Rule 11-44 "stay" was automatic as of December 6, 1976 and has remained in force during the pendency of the Chapter XI proceeding.

* * * *

B. EVEN IN THE ABSENCE OF A "STAY", NO COURT ACTION MAY INTERFERE WITH THE ONGOING JURISDICTION OF THE UNITED STATES BANKRUPTCY COURT.

APPENDIX D

NO. 1300

IN THE COURT OF CIVIL APPEALS
FOR THE THIRTEENTH SUPREME JUDICIAL
DISTRICT OF TEXAS AT CORPUS CHRISTI

***

VALLEY INTERNATIONAL PROPERTIES, INC.

Appellant

-vs-

LOS CAMPEONES, INC.

Appellee

On Appeal from the 197th District Court of
Cameron County, Texas

BRIEF FOR APPELLANT

December 7, 1977

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Attorney for Appellant

POINT I. THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION TO ENTER THE ORDER

COMPLAINED OF BECAUSE ARTICLE 2.24B OF THE TEXAS BUSINESS CORPORATION ACT IS UNCONSTITUTIONAL AS APPLIED TO APPELLANT.

A. ARTICLE 2.24B OF THE TEXAS BUSINESS CORPORATION ACT IS INVALID AND UNCONSTITUTIONAL AS APPLIED TO APPELLANT IN THAT IT CONFLICTS WITH ARTICLE I, § 8(4) AND ARTICLE VI, § 2 OF THE UNITED STATES CONSTITUTION.

B. ARTICLE 2.24B OF THE TEXAS BUSINESS CORPORATION ACT IS INVALID AND UNCONSTITUTIONAL AS APPLIED TO APPELLANT BECAUSE RULE 11-44 OF THE UNITED STATES BANKRUPTCY RULES STAYED ANY COURT PROCEEDING AGAINST APPELLANT.

APPENDIX E

NUMBER 1300

IN THE COURT OF CIVIL APPEALS
FOR THE THIRTEENTH SUPREME JUDICIAL
DISTRICT OF TEXAS

SITTING AT CORPUS CHRISTI, TEXAS

* * * * * * * *

VALLEY INTERNATIONAL PROPERTIES, INC.,
Appellant,

v.

LOS CAMPEONES, INC.,
Appellee.

* * * * * * * *

On appeal from the 197th District Court of
Cameron County.

* * * * * * * *

OPINION

Los Campeones, Inc. filed a petition on July 25, 1977, in the district court of Cameron County seeking relief under Tex. Bus. Corp. Act. Ann. art. 2.24 B (Supp 1978) which provides for a court of competent jurisdiction to summarily compel an annual shareholders' meeting upon application of any

shareholder where no annual meeting has been held within the prior thirteen months. Valley International Properties, Inc., was named in the petition as defendant. Los Campeones is the majority shareholder of V.I.P.

On that same day (July 25) the trial court granted an ex parte order ordering, among other things, the requested shareholders' meeting to be held on September 2. Then, on August 11, V.I.P. filed its answer which sought a hearing to set aside the July 25th order. The trial court set and conducted a hearing without a jury and thereafter, on September 7, rendered judgment, among other things, upholding its prior order and resetting the shareholders' meeting for September 26. V.I.P. appeals from the September 26th order.

Appellant brings forward four points of error. In those points appellant contends: 1) that the trial court was without jurisdiction of this matter because V.I.P.

was engaged in a Chapter XI, 11 U.S.C.A. § 701 et seq. (1970), Bankruptcy Proceeding at the time Los Campeones filed suit; 2) that Los Campeones could not compel a meeting because it was not a shareholder of record, because Los Campeones had a defective title to its V.I.P. shares in that it received its stock in a sale which violated the 1933 Securities Act, 15 U.S.C.A. §§ 17a et.seq. (1971), because Brownsville Savings & Loan Association, the prior owner of the V.I.P. shares now held by Los Campeones, breached an agreement with V.I.P., and because Brownsville defrauded V.I.P. in certain loan agreements. V.I.P. also contends (3 and 4) that the trial court erred in excluding and admitting certain evidence.

Los Campeones asserts by cross-point and by motions to dismiss the appeal that this court has no jurisdiction of an appeal from a Tex. Bus. Corp. Act Ann. art. 2.24 B (Supp. 1978) proceeding. We overrule all of the contentions of the parties and affirm the judgment of the trial court.

The background of this case involves an embittered struggle between the management and stockholders of V.I.P. to gain managerial control. V.I.P. is a corporation owning various country club and golf course facilities in Cameron County, Texas. In order to finance the purchase and construction of its facilities and property, V.I.P. borrowed substantial amounts from Brownsville Savings at some time prior to 1973. Subsequently, on September 24, 1973, Brownsville Savings in conjunction with Mutual Savings Association of Fort Worth and Abilene Savings Association issued a 3.9 million dollar permanent loan commitment to V.I.P. provided it performed certain conditions. The commitment was to be funded September 24, 1976. In December of 1974 V.I.P. shareholders pledged a majority of V.I.P.'s outstanding shares to Brownsville Savings in order to secure the previously mentioned loans.

Sometime in early 1976, it became apparent to V.I.P. and Brownsville Savings that V.I.P. would be

unable to pay off its debts as they became due. As a result, the loans were renegotiated and extended. As a further means of insuring the continuing viability of V.I.P., Bill Bass, president of V.I.P., began organizing a limited partnership, Los Conquistadores, which would be used to inject 1.6 million dollars of additionally needed capital into the V.I.P. operations. By June of 1976, Los Conquistadores allegedly had raised $800,000 and still needed to raise an additional $800,000. Bass then purportedly presented the limited partnership idea to Brownsville Savings' president, Thomas Pope, and other officers at a meeting on June 25, 1976. During this meeting, the Brownsville officers stated that they wanted no part of the limited partnership but that they would consider other alternatives for helping Bass inject additional capital into the V.I.P operations. These alternatives were presented to Brownsville Savings in a written memorandum on June 28, 1976. On July 1, 1976, Pope, on behalf of Brownsville Savings, responded to the memo by agreeing to release the V.I.P. stock in its possession in return for Bass'

agreeing to assign a $98,661.00 promissory note to Brownsville Savings. V.I.P. contends Brownsville Savings knew in July that without payment of the 3.9 million dollar commitment due on September 24, 1976, the limited partnership would be unable to secure the additional $800,000 required and thus would fail. But Robert Knowles an officer of Brownsville Savings in 1976, and later president, denied these allegations.

On September 24, 1976, Brownsville Savings refused to fund the 3.9 million dollar commitment because of the failure of V.I.P. to meet certain conditions in the loan commitment; i.e., failure to have the property free of liens and failure to issue a plat as required. The principals of Los Conquistadores then refused to further fund the $800,000, and Bass was unable to secure the $98,661.00 promissory note which he was going to assign to Brownsville Savings in order to secure a release of the pledged V.I.P. stock.

In November of 1976, Bass informed Brownsville

Savings that he could not make his payments on the prior debt, wheruepon Brownsville Savings accelerated maturities of its outstanding loans to V.I.P. In addition, on November 9, 1976, Brownsville Savings formed Los Campeones, Inc., appellee herein, for the purpose of taking over operations of V.I.P. Pat Stanford was hired as agent for Brownsville Savings to operate Los Campeones and the V.I.P. operations it was assuming. Los Campeones operated the golf course and country club facilities during parts of November and December of 1976.

On December 7, 1976, V.I.P. filed for Chapter XI Bankruptcy. The Federal Bankruptcy Judge then appointed a receiver for V.I.P. In March of 1977, V.I.P.'s unsecured creditors voted on and approved the arrangement plan submitted by V.I.P., and on May 10, 1977, the Bankruptcy Judge entered an order confirming the plan. Subsequently, on May 18, 1977, the Bankruptcy Judge entered an order allowing Brownsville Savings to foreclose on the V.I.P.'s shares

in its possession. On June 6, 1977, Pat Sanford's employment with Brownsville Savings terminated. On June 7, 1977, Sanford, representing Los Campeones, purchased all of the V.I.P. shares possessed by Brownsville Savings at a public foreclosure sale.

All of which brings us to a consideration of the merits of this appeal. No findings of fact and conclusions of law were filed nor were any requested. Appellant has brought forward a statement of facts and therefore we must presume that the trial judge found every fact necessary to sustain the judgment, provided such facts are raised by the pleadings and are supported by the evidence. Bishop v. Bishop, 359 S.W.2d 869 (Tex.Supp.1962); Texas Construction Associates, Inc. v. Balli, 558 S.W.2d 513 (Tex.Civ.App.—Corpus Christi 1977, no writ).

Appellant's first point of error asserts that the district court lacked subject matter jurisdiction to enter an order compelling an annual shareholders'

meeting under Tex. Bus. Corp. Act Ann. art.2.24B (Supp.1978) in that the article is unconstitutional as applied to appellant because the Federal Bankruptcy Court had exclusive and paramount jurisdiction over the appellant's corporative affairs and because Rule 11-44 (U.S.C.A. Bankruptcy Rules, 1975, pamphlet edition) stayed state court proceedings against appellant.

An overview of the jurisdictional provisions of Chapter XI is set forth in In Re Breinig, 40 F. Supp. 29 (E.D. Penn. 1941). Generally speaking under Chapter XI, the Bankruptcy Court has exclusive jurisdiction of the debtor and his property, wherever located. Chapter X of the Bankruptcy Act, 11 U.S.C.A. §511 (1970) contains substantially the same provision. In Re Bettinger Corporation, 197 F. Supp. 273 (D. Mass. 1961). The Bankruptcy Court does not have jurisdiction, though, over all suits brought against the Chapter XI debtor. 8 Collier on Bankruptcy ¶3.01 [2] (14th ed. 1974), Evarts v. Eloy Gin Corp. 204 F. 2d 712, 716 (9th Cir. 1953), cert. denied, 346 U.S. 876 (1953),

See In Re Prudence Bonds Corporation, 75 F.2d 262 (2nd Cir.1935).

Much of the precedent which we find relevant to the scope of the Bankruptcy Court's jurisdiction over suits to compel shareholder meetings is found not only in cases dealing with the jurisdiction of Chapter XI proceedings but also in Chapter X, 11 U.S.C.A. §§501 et seq. (1970), reorganization cases. Chapter X and Chapter XI represent the two corporate rehabilitation provisions of the Bankruptcy Act. Securities and Exchange Commission v. American Trailer Rentals Co., 379 U.S. 594, 85 S.Ct. 513 (1965); In re Texas Consumer Finance Corp, 480 F.2d 1261 (5th Cir. 1973). A more detailed explanation of the background and interrelationship of Chapters X and XI can be found in American Trailer, supra, and Texas Consumer Finance, supra.

In that regard, a Chapter X reorganization provides for extensive jurisdictional and judicial

control over the proceedings and administration of a corporation, while a Chapter XI arrangement is intended to provide a quick efficient method of implementing a composition among the debtor's general creditors with minimal court involvement. American Trailer, supra, T-Anchor Corp. v. TraVarillo Associates, 529 S.W.2d 622 (Tex.Civ.App. —Amarillo 1975, no writ). Moreover, Breining, supra, points out that certain provisions of Chapters I -VII, 11 U.S.C.A. §§1 et seq. (1966) are also applicable to the jurisdiction of a Chapter XI case. 8 Collier on Bankruptcy ¶310, 3.11 (14th ed. 1974). The jurisdiction of a Chapter XI Bankruptcy Court is somewhat broader, however, than that under Chapters I - VII. Pocono Racing Management Association, Inc., v. Banks, 434 F. Supp. 507, 509 (M.D. Pa. 1977); 1 Preferred Surfacing, Inc. v. Gwinnett Bank & Trust Co., 400 F. Supp. 280 (N.D. Ga. 1975); 8 Collier on Bankruptcy ¶3.01 (14th ed. 1974).

Appellant contends in its brief that pendency of an arrangement proceeding precludes a state court

from adjudicating any matter which might touch upon affairs of the corporate debtor without first obtaining the approval of the Bankruptcy Court. In sum, appellant argues that the instant suit to compel a shareholder's meeting is tantamount to a suit to oust current management, and that the potential result would indeed interfere with the arrangement debtors' affairs and the Bankruptcy Court's jurisdiction. We do not agree with this conclusion.

The mere pendency of a Chapter XI proceeding does not divest a state court of jurisdiction. Fitch v. Jones, 441 S.W.2d 187, 188 (Tex.Sup. 1969). A state claim must interfere with the jurisdiction of the Bankruptcy Court in order to preclude a state court's jurisdiction. In re Wisconsin Cent. Ry. Co., 94 F. Supp. 165, 167 (D. Minn. 1950), aff'd 191 F. 2d 822 (8th Cir. 1951),Cert. denied 278 U.S. 261, 49 S.Ct. 108 (1929); In Re Bush Terminal Co., 78 F.2d 662,665 (2nd Cir. 1935), Cert. denied 299 U.S. 596 (1936); Northeastern Real Estate Securities Corporation v. Goldstein, 276

N.Y. 64, 11 N.E. 2d 354 (1937), (cited with approval in Fitch, supra); 8 C.J.S. Bankruptcy §143 (1962). Compare 6 Collier on Bankruptcy ¶3.09 n. 19 (14th ed. 1977).

The Bankruptcy Court has no jurisdiction over the meetings of stockholders of the debtor. In Re. J. P. Linahan, Inc., 111 F.2d 590 (2nd Cir. 1940), Cert. denied, 299 U.S. 596 (1936); In Re Wisconsin Cent Ry. Co., supra; see also Taylor v. Philadelphia & Reading R. Co., 7 F. 381 (C.C.E.D. Pa. 1881). A Bankruptcy Court though, does have the power to enjoin a shareholders' meeting which will interfere with the administration of the debtors' estate. In Re Public Service Holding Corp., 141 F.2d 425 (2nd Cir. 1944); Fitch, supra; 6 Collier on Bankruptcy ¶8.15 (14th ed. 1977). In the instant case, there is no evidence that the court-appointed receiver, or any other party, sought an injunction or order staying the holding of an annual shareholders' meeting. Indeed, the Bankruptcy Judge signed an order approving the holding of a

shareholders' meeting. Furthermore, the mere fact that an election and possible installation of new directors might ultimately have had some indirect effect on the arrangement does not confer jurisdiction on the Bankruptcy Court. In Re Bush Terminal Co., supra; In Re New York and Worcester Express, Inc., 294 F.Supp. 1163 (S.D. N.Y. 1968). Accordingly, we find the state court had jurisdiction of this matter.

Because we have concluded that the Bankruptcy Court did not have jurisdiction over this suit to compel a shareholders' meeting, and because we construe the scope of Rule 11-44 to be in accord with the substantive provisions of Chapter XI, we find that the automatic rule 11-44 stay of the Chapter XI proceeding did not preclude the district court's order. Mid-Jersey National Bank v. Fidelity-Mortgage Investors, 518 F.2d 640 (3rd Cir. 1975). See also Matter of Cuba Electric and Furniture Corporation, 430 F. Supp. 689 (D. Puerto Rico 1977); Preferred Surfacing, Inc. v. Gwinnett Bank

& Trust Co., 400 F. Supp. 280, 284 (N.D. Ga. 1975). Appellant's first point is overruled.

* * * *

APPENDIX F

Court of Civil Appeals

Thirteenth Supreme Judicial District,

Corpus Christi, Texas

Below is the JUDGMENT in the numbered cause set out herein to be Filed and Entered in the Minutes of the Court of Civil Appeals, Thirteenth Supreme Judicial District of Texas, at Corpus Christi, as of the 15th day of June, 1978. If this Judgment does not conform to the opinion handed down by the Court in this cause, any party may file a Motion for Correction of Judgment with the Clerk of this Court.

CAUSE NO. 1300 (Tr.Ct. #77-1563-C)

VALLEY INTERNATIONAL PROPERTIES, INC.,
Appellant
v.
LOS CAMPEONES, INC.,
Appellee

On appeal to this Court from Cameron County, Texas

* * * * * * * *

JUDGMENT

On appeal from the 197th District Court of Cameron County. Opinion by Associate Justice Horace S. Young.

THIS CAUSE was submitted to the Court on January 5, 1978, on oral argument, briefs and transcript of the record; these having been examined and fully considered, it is the opinion of the Court that there was no error in the judgment of the court below and said judgment is hereby AFFIRMED.

It is further ordered that Appellant, Valley International Properties, Inc. pay all costs of this appeal expended and incurred, and this decision be certified below for observance.

* * * * * * * *

Shirley Selz, Clerk

APPENDIX G

NO. 1300

IN THE COURT OF CIVIL APPEALS

FOR THE

THIRTEENTH SUPREME JUDICIAL DISTRICT

at Corpus Christi, Texas.

VALLEY INTERNATIONAL PROPERTIES, INC.,

Appellant,

v.

LOS CAMPEONES, INC.,

Appellee.

On Appeal from the 197th Judicial District
Court of Cameron County, Texas.

APPELLANT"S MOTION FOR REHEARING

TO THE HONORABLE COURT OF CIVIL APPEALS:

COMES NOW Valley International Properties, Inc. and files its MOTION FOR REHEARING with respect

to the judgment and opinion of this Court handed down on June 15, 1978, and in support thereof would respectfully show the Court as follows:

Identification of Parties

In this MOTION FOR REHEARING, Valley International Properties, Inc. is alternatively referred to as "VIP" or as "Appellant". Los Campeones is referred to as Los Campeones or "Appellee". Brownsville Savings & Loan Association of Brownsville, Texas, is referred to as "Brownsville Savings".

Assignments of Error

First Point:

The Court of Civil Appeals erred in holding that the district court had jurisdiction to compel an annual shareholders meeting of a debtor corporation that was under the exclusive jurisdiction of the federal bankruptcy court.

Second Point:

The Court of Civil Appeals erred in finding Article 2.24 B of the Texas Business Corporation Act to be consistent with the United States Constitution as applied to Appellant.

Third Point:

The Court of Civil Appeals erred in finding that Rule 11-44 of the United States Bankruptcy Rules did not preempt or stay the Court proceeding from which this appeal is taken.

Fourth Point:

The Court of Civil Appeals erred in holding that the Chapter XI Bankruptcy Court did not have exclusive jurisdiction over suits brought against the debtor corporation, Appellant herein.

Fifth Point:

The Court of Civil Appeals erred in holding that 11

U.S.C. §§ 701 et seq. and Rule 11-44 of the United States Bankruptcy Rules did not divest the state court of jurisdiction of suits against the debtor.

Sixth Point:

The Court of Civil Appeals erred in holding that the order appealed from did not interfere with the prior jurisdiction of the bankruptcy court.

Seventh Point:

The Court of Civil Appeals erred in holding that the bankruptcy court did not have jurisdiction over a suit against a debtor in a Chapter XI Arrangement to compel an annual shareholders meeting.

APPENDIX H

COURT OF CIVIL APPEALS
Thirteenth Supreme Judicial District
10th Floor
Nueces County Courthouse
Corpus Christi, Texas 78401

June 26, 1978

Mr. Joel W. Ellis
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1632 Niels Esperson Building
Houston, Texas 77002

Re: Cause No. 1300; Valley International Properties v. Los Campeones, Inc.

Gentlemen:

Appellant's motion for rehearing was today overruled by this Court.

Very truly yours,

Shirley Selz, Clerk

APPENDIX I

No. B-7780

In The

SUPREME COURT OF TEXAS

VALLEY INTERNATIONAL PROPERTIES, INC.,
Petitioner,

v.

LOS CAMPEONES, INC.,
Respondent.

APPLICATION FOR WRIT OF ERROR

TO THE HONORABLE SUPREME COURT OF TEXAS:

COMES NOW Valley International Properties, Inc., hereinafter alternately "VIP and "Petitioner," and files this, its APPLICATION FOR WRIT OF ERROR pursuant to Rule 469 of the Texas Rules of Civil Procedure, and in support thereof would respectfully show the Court as follows:

* * * *

First Point of Error:

The Court of Civil Appeals erred in holding that the district court had jurisdiction to compel an annual shareholders meeting of a debtor corporation that was under the exclusive jurisdiction of the federal bankruptcy court.

Second Point of Error

The Court of Civil Appeals erred in finding Article 2.24 B of the Texas Business Corporation Act to be consistent with the United States Constitution as applied to Petitioner.

Third Point of Error:

The Court of Civil Appeals erred in finding that Rule 11-44 of the United States Bankruptcy Rules did not preempt or stay the Court Proceeding from which this appeal is taken.

Fourth Point of Error:

The Court of Civil Appeals erred in holding that the Chapter XI Bankruptcy Court did not have exclusive jurisdiction over suits brought against the debtor corporation, Petitioner herein.

Fifth Point of Error:

The Court of Civil Appeals erred in holding that 11 U.S.C. §§ 701 et seq. and Rule 11-44 of the United States Bankruptcy Rules did not divest the state court of jurisdiction of suits against the debtor

Sixth Point of Error:

The Court of Civil Appeals erred in holding that the order appealed from did not interfere with the prior jurisdiction of the bankruptcy court.

Seventh Point of Error:

The Court of Civil Appeals erred in holding

that the bankruptcy court did not have jurisdiction over a suit against a debtor in a Chapter XI Arrangement to compel an annual shareholders meeting.

APPENDIX J

CLERK'S OFFICE - SUPREME COURT

Austin, Texas

October 25, 1978

Dear Sir:

You are hereby notified that the Application for Writ of Error in the Case of VALLEY INTERNATIONAL PROPERTIES v. LOS CAMPEONES, INC., No. B-7780 was this day refused. No reversible error.

Very truly yours,
GARSON R. JACKSON,
Clerk

APPENDIX K

IN THE SUPREME COURT

OF THE STATE OF TEXAS

APPLICATION FOR WRIT OF ERROR NO. B-7780

VALLEY INTERNATIONAL PROPERTIES, INC.,
Petitioner,

v.

LOS CAMPEONES, INC.,
Respondent.

NOTICE OF APPEAL TO THE
UNITED STATES SUPREME COURT
BY VALLEY INTERNATIONAL PROPERTIES, INC.

TO THE HONORABLE JUSTICES OF SAID COURT, AND TO ALL PARTIES AND ATTORNEYS OF RECORD:

Notice is given that Valley International Properties, Inc. hereby appeals to the Supreme Court of the United States from the Judgment entered by the 13th Supreme Judicial District Court of Civil Appeals

at Corpus Christi, Texas on June 15, 1978, in Cause Number 1300 wherein Valley International Properties, Inc. was Appellant, and from the refusal of the Supreme Court of Texas to grant its Application for Writ of Error in Cause No. B-7780 wherein Valley International Properties, Inc. was Petitioner, said refusal causing said Judgment of June 15, 1978 to become final on the date of said refusal, October 25, 1978.

This Appeal is taken pursuant to 28 U.S.C. § 1257(2).

The portions of the Judgment appealed from are as follows:

(1) That portion of the Judgment finding Article 2.24B of the Texas Business Corporation Act to be consistent with the United States Constitution. Appellant urges it is unconstitutional as applied to Appellant.

(2) That portion of the Judgment holding that the trial court had jurisdiction to compel an annual shareholders meeting of Appellant, a debtor corporation under the exclusive jurisdiction of the bankruptcy court.

(3) That portion of the Judgment refusing to hold that Rule 11-44 of the United States Bankruptcy Rules did not preempt or stay the trial court proceeding.

(4) That portion of the Judgment refusing to hold that a Chapter XI Bankruptcy Court has exclusive jurisdiction over suits brought against a debtor corporation.

(5) That portion of the Judgment holding that the trial court's order compelling an annual shareholders meeting did not interfere with the prior jurisdiction of the bankruptcy court.

(6) And that portion of the Judgment holding that the bankruptcy court did not have jurisdiction over a suit against a debtor corporation in a Chapter XI arrangement.

By service hereof pursuant to Rule 33 of the Rules of the Supreme Court of the United States, notice of said Appeal is given to the Courts, all necessary parties, and counsel identified below.

Respectfully submitted,

Rhett G. Campbell
1617 Marathon Building
600 Jefferson Avenue
Houston, Texas 77002
(713) 659-8697
Attorney for Appellant

October 27, 1978